

TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman
Lynn Greer, Director
Sara Kyle, Director



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460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

EXECUTIVE SECRETARY

TO: Chairman Melvin Malone
Director Lynn Greer
Director Sara Kyle

FROM: Eddie Roberson *ER*
Chief, Consumer Services Division

Richard Collier *RC*
General Counsel

DATE: March 21, 2000

SUBJECT: Settlement Agreement with Excel Long Distance (Docket No. 99-00794)

Attached is the Settlement Agreement ("Agreement") between the Consumer Services Division ("CSD") and Excel Telecommunications, Inc. ("Excel"). This docket was opened by the Tennessee Regulatory Authority ("TRA") on October 14, 1999, for the purpose of allowing the CSD to conduct an investigation into the practices of Excel relating to the switching of Tennessee consumers' long distance service.

In the Settlement Agreement, Excel agrees to pay the Authority the sum of \$200,000 within thirty (30) days after Authority's approval of the Agreement. Further, Excel agrees to notify all of its Tennessee customers that they may be entitled to a refund of Excel charges if their long distance service was switched without their permission. The Settlement Agreement also prescribes the actions Excel will take to prevent further slamming complaints. To assist in monitoring compliance, Excel will provide to the CSD bi-monthly reports containing various requested information.

This matter is on the March 28th Conference Agenda for your consideration. A representative of Excel will be present at the Conference in case you should have any questions or comments.

cc: David Waddell, Executive Secretary
Don Baltimore, Counsel for Excel

POSTED
2-21-00

SETTLEMENT AGREEMENT
(Docket 99-00794)

1. The purpose of this document is to memorialize a settlement agreement ("Agreement") between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority (the "Authority") and Excel Telecommunications, Inc. ("Excel" or the "Company").¹ On November 10, 1995, Excel was issued a Certificate of Convenience and Necessity to provide interexchange telecommunications services in the State of Tennessee; therefore, Excel is subject to the applicable laws of the State of Tennessee and to the rules and regulations of the Authority.

2. From January 22, 1999 to February 10, 2000, the Authority has received approximately forty-three (43) complaints from Tennessee consumers alleging that their long distance provider had been switched to Excel without their permission and in most cases by means of alleged forgeries of their signatures. In mid-1999, on its own initiative, Excel retained outside counsel to supervise an independent investigation of possible unlawful conduct by independent sales representatives and alerted federal law enforcement authorities to the existence of this unlawful conduct.

3. In the course of its investigation, Excel determined that the slamming complaints were concentrated in and around

¹ In this Agreement, "Excel" refers to Excel Telecommunications, Inc., a licensed provider of interexchange telecommunications services in Tennessee, as well as its affiliates through which the company's services are supported and marketed.

Shelby County and were the result of improper activities undertaken by certain of its independent sales representatives.

4. Excel does not condone, and Excel's contracts and policies expressly prohibit, the actions of certain of its independent sales representatives that caused this proceeding to be initiated. Excel acknowledges its responsibility to comply with Tenn. Code Ann. Section 64-4-125 and with TRA Rules 1220-4-2-.56 and 1220-4-2-.58 (the "Applicable Tennessee Law"). Excel also acknowledges its responsibility to utilize appropriate contractual provisions, policies and other affirmative measures to ensure to the fullest extent practicable that its independent sales representatives comply with the Applicable Tennessee Law.

5. Excel has taken several measures to address the illegal activities of certain of its independent sales representatives in Tennessee. In addition to the actions taken by Excel described in paragraph 2, Excel has terminated independent sales representatives who, based on evidence available to date, have violated the Applicable Tennessee Law. Excel is also withholding or charging back compensation payments to independent sales representatives as a result of conduct that Excel believes violates the Applicable Tennessee Law and/or Excel's policies. Moreover, Excel is cooperating with federal law enforcement authorities in an effort to ensure that culpable individuals are identified and that appropriate legal actions are taken against them. In addition, Excel voluntarily implemented independent third party verification of all new residential customers in

Tennessee, effective October 15, 1999 (except those submitted by a customer directly to the local exchange carrier).

6. As part of its investigation and in an effort to address the increase in slamming complaints against Excel and certain of its independent sales representatives in Tennessee, the CSD began formal discussions with Excel on September 23, 1999.

7. On October 14, 1999, the Authority opened this docket No. 99-00794 for the purpose of conducting a formal investigation of allegations that the long distance service providers of certain Tennessee consumers were switched to Excel without those consumers' authorization.

8. During the course of its investigation, the CSD has reviewed all complaints and interviewed Tennessee consumers, reviewed documents and information provided by Excel, and has met with representatives of Excel on several occasions.

9. Consistent with its policies and as required by Applicable Tennessee Law, Excel either has or will provide appropriate refunds of disputed charges to the consumers whose long-distance service was switched to Excel without their authorization.

10. Excel has acknowledged that it has further strengthened its policies and procedures designed to prevent and detect slamming. For example, Excel has intensified its internal confirmation procedures. In addition, effective October 15, 1999, Excel voluntarily implemented independent third-party

verification of all new residential customer service requests in Tennessee (except those submitted by a customer directly to the local exchange carrier). This action, along with other measures taken by Excel, as described herein, appears to have effectively halted the illegal conduct by certain independent sales representatives.²

THE AGREED TERMS OF SETTLEMENT

11. In order to resolve this matter, Excel and the CSD have agreed to the following terms of the proposed settlement for consideration by the Authority:

11.1. Excel agrees to fully comply with all Tennessee laws and regulations, including, but not limited to, Tenn. Code Ann. §65-4-125 and TRA Rules 1220-4-2-.56 and 1220-4-2-.58.

11.2. Excel will continue its current investigation of fraudulent conduct and violations of Applicable Tennessee Law by certain independent sales representatives and will provide information concerning such conduct or violations obtained in its investigation to the appropriate federal law enforcement authorities.

² According to Authority records, only one slamming complaint (No. 00-0238) has been filed against Excel since January 1, 2000. The Staff is still in the process of investigating this complaint, and Excel is fully cooperating with this investigation.

11.3 Excel shall notify, in writing, all of its current Tennessee customers acquired since November 1, 1998, advising them of their rights under the Applicable Tennessee Law and explaining to them the procedures to follow to obtain refunds if their long distance service was switched to Excel without their authorization. Excel agrees to work with the CSD on the content of the customer notification. Within sixty (60) days of approval of this Agreement by the Authority, Excel will mail such notification with monthly statements to those customers billed directly by Excel, and via first class mail to other customers. Within six (6) months from the approval of this Agreement by the Authority, Excel shall:

11.3.1. Submit to the CSD an independent auditor's report verifying the number of notices sent, the number of responses received, and the aggregate dollar amount of refunds issued, and certifying that eligible Tennessee consumers who requested a refund from Excel under this section 11.3 have, in fact, received an appropriate refund.

11.3.2. Make available, upon request by the CSD, an alphabetical list of the name and address of each Tennessee

customer of Excel who received a refund under this section 11.3, the amount of each customer's refund, and the total amount of all such refunds.

- 11.4. For a period of twelve (12) months following the Authority's approval of this Agreement, Excel shall submit to the CSD bi-monthly reports setting forth a summary of all complaints received by Excel from Tennessee customers who allege that their long-distance service was switched to Excel without their authorization, to the extent such complaints are not covered by the notice and auditor's report required by section 11.3. Each summary shall include the following: the name and telephone number of the customer; the date of the alleged unauthorized switch; the name of the independent sales representative responsible for the alleged switch; a description of the action taken by Excel with respect to both the customer and the responsible independent sales representative (including where applicable copies of termination letters as provided below in section 11.5); and a summary of refunds issued in response to such complaints. Because these bi-monthly reports pertain to contractual relationships between Excel and its customers and independent sales representatives, the reports shall

be treated as confidential to the extent allowable by law.

- 11.5. Based on available evidence developed during its current investigation, Excel shall terminate any independent sales representatives who have violated the Applicable Tennessee Law. Excel shall provide to the CSD copies of the letters terminating its contractual relationship with any such independent sales representatives as part of its bi-monthly reports as described in paragraph 11.4, provided that the termination letters shall be treated as confidential to the extent allowable by law.
- 11.6. To ensure that independent sales representatives do not profit from their illegal conduct, Excel shall withhold payments of compensation to independent sales representatives for the acquisition of customers in Tennessee that Excel reasonably believes were the result of conduct that violated the Applicable Tennessee Law or the policies of Excel.
- 11.7. Excel currently verifies all acquisitions of new residential customers in Tennessee (except those submitted by a customer directly to the local exchange carrier) by use of independent third-party verification ("TPV"). Excel shall continue to employ TPV and to obtain via TPV the verbal, taped

authorization of customers before changing their long-distance service to Excel.

11.7.1. Excel shall provide a copy of the third-party verification script to the CSD within 30 days of the approval by the Authority of this Agreement.

11.7.2. Excel will cause audio-recordings to be made of all verifications performed by the independent third party. Excel, by contract, will require these recordings to be retained by the independent third party for a period of two (2) years, and shall endeavor to make such recordings available to the CSD upon request pursuant to TRA Rule 1220-4-2-.13(3).

11.8. Within six (6) months of the date of the Authority's approval of this Agreement, Excel will provide to the CSD a revised training program which will be required for all new independent representatives who reside in Tennessee. This training program will (i) explain that applicable federal and state statutes and regulations forbid slamming; (ii) make clear that violating such statutes or regulations will result in consequences such as termination of

independent representative positions, forfeiture of commissions and other payments, and possible civil and criminal sanctions; (iii) require a written acknowledgment that the independent sales representative understands and accepts Excel's policy and contractual requirement prohibiting submission of carrier changes without proper authorization as prescribed by applicable federal and state statutes and regulations. Excel will maintain such acknowledgments for a period of two (2) years and will make these available to the CSD upon request pursuant to TRA Rule 1220-4-2-.13(3).

11.9. Excel agrees to pay to the Authority the amount of \$200,000, which shall be used for consumer education, TRA regulatory expenses, or such other public purpose as the Authority may determine. Payment shall be made to the Authority within thirty (30) days of the date of the Authority's approval of this Agreement.

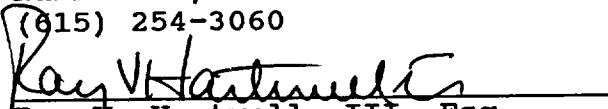
11.10. For and in consideration of Excel's payment and the other undertakings and covenants described herein, the CSD and Excel agree that the docket in this

matter shall be closed following entry of an order reflecting the approval of this Agreement by the Authority, subject to being reopened by the Authority in the event of a breach of this Agreement by Excel or for other good cause. In addition, all complaints that were or might have been asserted against Excel or its officers, employees, agents or independent sales representatives pertaining to conduct engaged in prior to the date of this Agreement, are hereby settled; provided, however, that nothing in this Agreement is intended to release any independent representative from any civil or criminal liability such individual or entity may have as a result of involvement in illegal or improper conduct.

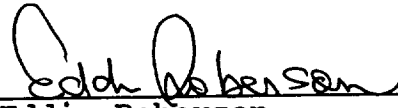
Entered into this the 1st day of March, 2000 by:



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